

ARTICLE APPEARED
ON PAGE A-4

WASHINGTON POST
14 December 1984

Most of CBS' Probe Barred as Evidence

Westmoreland Lawyer Sees No Setback

By Eleanor Randolph
Washington Post Staff Writer

NEW YORK, Dec. 13—A federal judge today refused to allow lawyers for retired general William C. Westmoreland to introduce as evidence most of a CBS internal investigation of the documentary at issue in Westmoreland's \$120 million libel suit against the network.

U.S. District Court Judge Pierre N. Leval said the 1982 report by CBS executive producer Burton Benjamin was mostly "hearsay" and is "largely irrelevant" to the issues in this trial.

A lawyer for CBS, which contended that the report should be off-limits, called the judge's opinion a "victory"; Westmoreland's attorney, Dan M. Burt, told reporters it was "fair" and "will not hinder us."

The order means that jurors will not hear Benjamin's conclusions that the documentary—which accused Westmoreland of being part of a conspiracy to suppress higher enemy-troop figures in 1967 in order to maintain support for the Vietnam war—had 11 "principal flaws," including a lack of balance, and did not prove a conspiracy.

Leval also stated in strong, clear language one of the most difficult concepts in libel cases of this kind—namely, that an unfair article

or broadcast about a public figure is not necessarily libelous. "The fairness of the broadcast is not at issue in the libel suit," Leval wrote. "The issue . . . is whether the publisher recklessly or knowingly published false material . . ."

He also explained that libel law "does not require the publisher to grant his accused equal time or fair reply," and added that "a publisher who honestly believes in the truth of his accusations (and can point to a non-reckless basis for his beliefs) is under no obligation under the libel law to treat the subject of his accusations fairly or evenhandedly."

However, Leval rejected CBS' argument that Benjamin's report should be excluded as evidence because news organizations would shun similar internal investigations of news programs in the future if such self-criticism could become part of a trial.

And the judge suggested that some comments CBS co-defendants made to Benjamin "could be appropriate" for the trial.

The documentary, "The Uncounted Enemy: A Vietnam Deception," aired in January 1982. Following publication in May of an article in TV Guide criticizing the show, Benjamin was asked by Van Gordon Sauter, then president of CBS News, to investigate.

Although his July 1982 report criticized the broadcast for violating CBS guidelines, Benjamin said that getting a number of military men and intelligence officials on camera talking about whether they "cooked the books" was "an achievement of no small dimension."

He also seemed to agree with co-defendant Mike Wallace's assessment six months after the broadcast that the documentary was accurate.

Benjamin's report chastised those involved in the show for violations of CBS guidelines, including allowing one interview subject to see interviews with others before facing the cameras a second time.

Leval made clear in today's opinion and in a ruling Wednesday that any violation of CBS guidelines by producer George Crile or the other co-defendants—Wallace and Sam Adams, a consultant on the program—could not be mentioned before the jury.

Still, some legal experts say the opinion will allow Westmoreland's lawyers to ask Crile and the others about statements Benjamin attributed to them in his report. For example, Benjamin quoted Crile at one point as saying that Westmoreland "seems stupid"—a comment CBS lawyers are expected to try to keep out of the courtroom.

Leval has also made clear that the jury should not be told that CBS suspended Crile, with pay, in June 1983 for a year. At the time, the network said it was taking the action after it became known that Crile had taped interviews with former defense secretary Robert S. McNamara and others without their permission or the permission of CBS News executives.